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8 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TEXAS**  
9 **TYLER DIVISION**

10 LONE STAR TECHNOLOGICAL  
11 INNOVATIONS, LLC,

12 Plaintiff,

13 v.

14 ASUSTEK COMPUTER INC.,

15 Defendant.

Case No. 6:19-cv-00059-RWS

**DEFENDANT ASUSTeK COMPUTER  
INC.'S MOTION TO DISMISS**

**DEMAND FOR JURY TRIAL**

Judge: Hon. Robert W. Schroder III

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17  
18 Defendant ASUSTeK Computer Inc. ("Asus") hereby moves under Federal Rule of Civil  
19 Procedure 12(b)(6) to dismiss Lone Star Technological Innovations, LLC's ("Lone Star") First  
20 Amended Complaint (Dkt. No. 22), which fails to plead direct, contributory, inducing, or joint  
21 infringement with "enough facts 'to state a claim to relief that is plausible on its face.'" *Chapterhouse, LLC v. Shopify, Inc.*, Case No. 2:18-cv-00300-JRG, 2018 U.S. Dist. LEXIS 219072,  
22 \*1-2 (E.D. Tex. Dec. 10, 2018) (quoting *Ashcroft v Iqbal*, 556 U.S. 662, 678 (2009), *Bell Atl. Corp.*  
23 *v. Twombly*, 550 U.S. 544, 547 (2007)).  
24

25 Asus adopts and incorporates in its entirety the Motion to Dismiss Plaintiff's First Amended  
26 Complaint for Failure to State a Claim filed by defendant Barco NV ("Barco") as Dkt. No. 19 in  
27 *Lone Star Technological Innovations, LLC v. Barco NV*, Case No. 6:19-cv-0060-RWS (E.D. Tex.)  
28



1 (“Barco Action”). Barco’s motion to dismiss is attached as Exhibit 1 to the Declaration of Vinay V. Joshi (“Joshi Decl.”), filed herewith.

3 The Barco Action is also pending before this Court and involves the same patent-in-suit and  
4 same plaintiff as the instant action. The language of the First Amended Complaint in the Barco  
5 Action (Joshi Decl. Exh. 2) is operatively identical to the First Amended Complaint filed against  
6 Asus (Dkt. No. 22), differing only in the identity of the defendants and the accused products.<sup>1</sup> For  
7 example, paragraph 14 of the First Amended Complaint, alleging direct infringement, is word-for-  
8 word identical to paragraph 14 of the First Amended Complaint in the Barco Action:

9 <b>First Amended Complaint against Asus at ¶ 14 (Dkt. No. 22)</b>	10 <b>First Amended Complaint against Barco at ¶ 14 (Joshi Decl. Exh. 2)</b>
11 Based on information and belief, Defendant’s 12 infringing devices contain hardware 13 components (e.g. the display screen/output 14 image, an internal processor and software 15 components (e.g. firmware instructions) which 16 specifically provide the ability to change the 17 hue and/or saturation of an individual color in 18 the output image. Upon information and belief, 19 Defendant’s manufacture, sale, offer for sale, 20 and/or distribution of devices that selectively change the hue and/or saturation of an individual color in the output image in an infringing manner directly infringe one or more claims of the ’435 Patent, including by way of example claim 17 of the ’435 patent.	Based on information and belief, Defendant’s infringing devices contain hardware components (e.g. the display screen/output image, an internal processor and OSD (on- screen display)) and software components (e.g. firmware instructions) which specifically provide the ability to change the hue and/or saturation of an individual color in the output image. Upon information and belief, Defendant manufactures, sells, offers for sale, and/or distributions of devices that selectively change the hue and/or saturation of an individual color in the output image in an infringing manner directly infringe one or more claims of the ’435 and ’012 Patents, including by way of example claim 1 of the ’435 Patent.

21 This language is virtually unchanged from the original complaint in each action. *Compare* Dkt. No.  
22 1 ¶ 15 (direct infringement allegations against Asus) *with* Joshi decl. Exh. 4 ¶ 14 (direct  
23 infringement allegations against Barco).

24 In response to the original complaint, Barco filed a motion to dismiss. *See* Joshi Decl. Exh.  
25 4 at Dkt. No. 12 (Barco Action docket sheet). Recognizing the deficiency of its original complaint,

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27 <sup>1</sup> The cookie cutter nature of the allegations is further evidenced when the First Amended  
28 Complaint (Dkt. No. 22) is opened in Adobe Acrobat; the corresponding window is entitled,  
“Microsoft Word – (Draft) LTSI v LG – Complaint”. *See* Joshi Decl. Exh. 3.



1 Lone Star chose to file an amended complaint rather than respond to Barco's motion. *See* Joshi  
 2 Decl. Exh. 5 at Dkt. No. 17 (Barco Action docket sheet). Barco filed a motion to dismiss in  
 3 response. *See* Joshi Decl. Exh. 5 at Dkt. No. 19.

4 As with the first amended complaint against Barco, Lone Star's First Amended Complaint  
 5 against Asus lacks any allegation of how the accused products correspond to the elements of any  
 6 asserted claim. *See Chapterhouse*, 2018 U.S. Dist. LEXIS 219072 at \*6 ("Plaintiff must further  
 7 allege how the screenshots meet the text of the exemplary claim in order to lay out sufficient factual  
 8 allegations which might permit the Court to find that the *Iqbal/Twombly* standard is met.").

9 For the reasons set forth in Barco's motion, Lone Star's allegations of direct, contributory,  
 10 inducing, and joint infringement are deficient, and the First Amended Complaint should be  
 11 dismissed.<sup>2</sup> A proposed order is attached herewith.

12  
 13 Dated: September 17, 2019

Respectfully submitted,

14  
 15 /s/ Vinay V. Joshi

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 21 ***Attorneys for Defendant***  
***ASUSTeK Computer Inc.***

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 27 <sup>2</sup> In the alternative, Asus requests that the Court stay this action pending the outcome of Barco's  
 28 motion to dismiss, which has been fully briefed. *See* Joshi Decl. Exh. 5 at Dkt. Nos. 19, 20, 21.



**CERTIFICATE OF SERVICE**

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served on this 17th day of September, 2019, with a copy of this email via the Court's CM/ECF system per Local Rule CV-5(c).

/s/ Vinay V. Joshi

Vinay V. Joshi